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Federal Communications Commission  
Office of Secretary

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May 14, 1997

**via Hand Delivery**

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

**Re: Metrocall, Inc.  
Motion for Stay of Second Report and Order in  
WT Docket No. 96-18 and PP Docket No. 93-253**

Dear Mr. Caton:

Metrocall, Inc. ("Metrocall"), by its attorneys, hereby respectfully requests that the Commission act upon its Motion for Stay (the "Motion") of the rules adopted in the *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate the Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-59 (released February 24, 1997) (the "Second R&O"). The Motion was filed with the Commission on April 11, 1997, concurrently with Metrocall's Petition for Partial Reconsideration or Clarification of the Second R&O.

The Second R&O specified that the new rules would become effective 60 days after publication in the Federal Register; Federal Register publication occurred on March 12, 1997. Consequently, the new rules have already gone into effect, on May 11, 1997, without the Commission having ruled on Metrocall's Motion.

Metrocall respectfully submits that the Commission should rule on the Motion promptly, and, that for the reasons given in the Motion, the requested stay of the new rules should be granted. A number of parties have sought reconsideration of various provisions of the new rules, and appeals of the Second R&O have been consolidated and are pending before the U.S. Court of Appeals for the D.C. Circuit. See Metamora Telephone Company v. FCC, Case No. 97-1107; and Benkelman Telephone Co., et al. v. FCC, Case No. 97-1245. Numerous provisions of the Second R&O have been challenged, including the provisions relating to the dismissal of pending paging applications, the market areas for wide-area paging licenses, and design of paging auctions. A stay is necessary to preserve the *status quo* while the FCC considers the legal challenges to the Second R&O raised in the Petitions for Reconsideration. In particular, dismissing pending paging applications, or proceeding to auction licenses under the new rules, would only result in burdening applicants and the Commission, and further delaying the issuance

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of wide-area paging licenses, if the challenged rule provisions are reversed following administrative or judicial review.

Moreover, in light of the filing of the Petitions for Reconsideration, the FCC requested on April 28, 1997 that the Court hold the Benkelman appeal in abeyance. At least two parties, the Personal Communications Industry Association ("PCIA") and PowerPage, Inc. ("PowerPage") have opposed the FCC's motion, on the grounds that the FCC gave no indication that it would stay auctions of paging frequencies while it considered the Petitions for Reconsideration. See Comments of Personal Communications Industry Association on Motion to Hold Case in Abeyance (filed May 8, 1997) ("PCIA Comments"); PowerPage, Inc. Opposition to Motion to Hold Case in Abeyance (filed May 9, 1997) ("PowerPage Opposition"). PCIA further expressed concern that the FCC would proceed with the dismissal of pending applications before considering the arguments raised on reconsideration. See PCIA Comments at 2. PowerPage noted that, should the FCC proceed with paging auctions during the pendency of the petitions for reconsideration, and the Court does not have an opportunity to consider the appeals until sometime thereafter, the parties to this proceeding would effectively be deprived of relief even if they prevail before the Court. See PowerPage Opposition at 2.

Both of those parties stated that they would have no objection to holding the pending appeals in abeyance if the FCC agreed not to proceed with paging auctions (and, in PCIA's case, with the dismissal of pending paging applications) until the Petitions for Reconsideration have been acted upon. See PCIA Comments at 2-3; PowerPage Opposition at 2-3. A grant of Metrocall's Motion would therefore eliminate the grounds for the objections to the FCC's Motion to Hold Case in Abeyance, and would provide assurances to the Court and the parties before it that the *status quo* will not change pending the Commission's disposition of the Petitions for Reconsideration in this proceeding.

For these reasons, and the reasons stated in its Motion, Metrocall respectfully requests that the Commission expeditiously act upon the Motion for Stay, and stay the effectiveness of the rules adopted in the Second R&O pending action on the Petitions for Reconsideration in this proceeding.

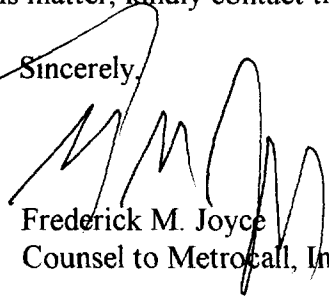
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Thank you for your attention to this matter. If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to be 'F. M. Joyce', written over the word 'Sincerely,'.

Frederick M. Joyce  
Counsel to Metrocall, Inc.

FMJ/cm

cc: Attached Service List (via first class mail, except as otherwise indicated)

ENCLOSURES\RJ78\FCC5-13.LTR

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